

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN LAMAR FRAZIER,

Plaintiff, No. CIV S-05-0774 MCE JFM P

VS.

SPENCER ROWELL, et al.,

Defendants. ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. In the complaint,<sup>1</sup> plaintiff claims that defendant Spencer Rowell<sup>2</sup> violated his constitutional rights through the use of excessive force. On October 20, 2006, defendant Rowell filed a motion for summary judgment. On November 30, 2006, plaintiff filed an opposition to the motion for summary judgment. On December 11, 2006, defendant Rowell filed a reply brief.

<sup>1</sup> This action is proceeding on plaintiff's original complaint, filed April 20, 2005. Defendant Rowell answered the complaint on April 24, 2006. On December 1, 2006, plaintiff submitted an amended complaint. In the amended complaint, plaintiff apparently attempts to amend some of the details in the claims on which this action is proceeding. Plaintiff neither sought nor was granted leave to file this amended complaint. Cf. Fed. R. Civ. P. 15. It shall, therefore, be disregarded.

<sup>2</sup> Plaintiff names three defendants in the complaint, filed April 20, 2005. This action is proceeding solely on plaintiff's claims against defendant Rowell. See Order filed June 6, 2005.

1                   On February 15, 2007, plaintiff filed a document styled "Motion to Compel and  
2 Stay Summary Judgment Orders." By this document, plaintiff seeks an order requiring defendant  
3 to produce to him the Sacramento County Sheriff's Department case file on the incident at bar.  
4 Plaintiff also seeks a complete copy of his deposition transcript.

5                   In support of this motion, plaintiff contends that defendant has now produced to  
6 an expert witness designated by defendant documents that plaintiff sought and which defendant  
7 previously claimed were not in his custody or control. Specifically, plaintiff seeks the  
8 Sacramento County Sheriff Department's case file from the incident at bar. On January 19,  
9 2007, defendant Rowell filed a designation/disclosure of an expert witness. Attached to the  
10 designation is a report from the expert, who includes that file in the list of documents reviewed  
11 for preparation of the report. It appears that plaintiff's contention concerning defendant's  
12 previous failure to provide these documents may have some merit. (See Defendant Spencer  
13 Rowell's Opposition to Plaintiff's Motion to Compel and Request for Additional Time to  
14 Conduct Discovery, filed August 31, 2006, at 4-5.) Good cause appearing, defendant Rowell  
15 will be directed to produce to this court for in camera review the Sacramento County Sheriff's  
16 Department case file provided to defendant's expert witness.

17                   Plaintiff also seeks a complete copy of his deposition transcript. Plaintiff does not  
18 specify from whom he seeks the transcript. The expenditure of public funds on behalf of an  
19 indigent litigant is proper only when authorized by Congress. Tedder v. Odel, 890 F.2d 210 (9th  
20 Cir. 1989). The in forma pauperis statute does not authorize the expenditure of public funds for  
21 the cost of deposition transcripts. To the extent that plaintiff seeks production of a free copy of  
22 the transcript, the request will be denied.<sup>3</sup>

23                   In accordance with the above, IT IS HEREBY ORDERED that:

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<sup>3</sup> Nothing in this order precludes plaintiff from making arrangements to obtain a copy of  
26 his deposition transcript in the manner prescribed by the reporter who transcribed the  
proceedings.

1. Plaintiff's February 15, 2007 motion to compel and to stay summary judgment is granted in part;

2. Within ten days from the date of this order defendant Rowell shall submit to this court for in camera review the Sacramento County Sheriff's Department case file provided to his expert witness by delivering a copy of said file to the chambers of the undersigned; and

3. Plaintiff's request for a complete copy of his deposition transcript is denied.

DATED: June 4, 2007.

John J. Womack  
UNITED STATES MAGISTRATE JUDGE

12